Acme Tile and Terrazzo Co. *and* Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL–CIO

Admiral Tile Co., Inc. *and* Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL–CIO

Jolicoeur & Resmini Co., Inc. *and* Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL–CIO

Providence Marble Corp. *and* Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL–CIO

Roman Tile & Terrazzo Co. *and* Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL–CIO

Ceramic Tile, Marble and Terrazzo Contractors Association of Rhode Island, Inc. *and* Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL–CIO

International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island (Acme Tile & Terrazzo Co., et al) *and* Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL–CIO. Cases 1–CA–26463–1, 1–CA–26463–2, 1–CA–26463–3, 1–CA–26463–4, 1–CA–26463–5, 1–CA–26463–6, and 1–CB–7053

February 28, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On April 8, 1991, Administrative Law Judge Peter E. Donnelly issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs and Respondent Employers and Respondent Ceramic Tile, Marble and Terrazzo Contractors Association of Rhode Island, Inc. filed a joint answering brief to the Charging Party's exceptions. Respondent International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island filed limited exceptions and a supporting brief, to which the Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

I. BACKGROUND

The facts, provided in detail in the judge's decision, may be summarized as follows. Respondent Ceramic Tile, Marble and Terrazzo Contractors Association of Rhode Island (Association) is the authorized collective-bargaining representative for its individual members, namely, the Respondent Employers. The Association had negotiated series of collective-bargaining agreements with Local 1 of the International Union of Bricklayers and Allied Craftsmen of Rhode Island (Local 1), the last of which was effective May 1, 1988, through April 30, 1990. The agreement covered work performed by tile ''setters'' (also called ''mechanics''). The Association also entered into a prehire agreement with the Tile, Marble, Terrazzo Finishers, Shopworkers & Granite Cutters International Union AFL–CIO (Local 36) (herein Local 36) effective April 1, 1988, through March 31, 1989, covering ''helpers.'' Helpers perform grouting, acid washing, mixing, cleanup, and various other duties. In December 1988, Local 36 was formally notified that as a result of its International union's decision to affiliate with the International Brotherhood of Carpenters (Carpenters), Local 36 was a Carpenters affiliate. Local 36 was authorized under the Agreement of Affiliation to retain its identity and to exercise autonomy at the local level for a period of at least 2 years from the date of affiliation.

In January 1989, Bricklayers Local 1 Business Manager David Barricelli invited Local 36 President John Martino and its executive board to meet to discuss affiliation. At the meeting, Local 36 declined to affiliate with Local 1 because it wanted to retain its own business agent, executive board, and set of books, rather than integrate operations as Local 1 had proposed. On February 3, Barricelli addressed Local 36 members at one of their union meetings and made his proposal directly to the members. He also told them that if they did not join Local 1, he would speak to the Bricklayers locals in Massachusetts and Connecticut and would tell them that the Local 36 helpers were carpenters and should no longer be permitted to work in those jurisdictions. This was significant because much of the Respondent Employers' work was done in Massachusetts and Connecticut. The members discussed their options among themselves and voted to remain with the Carpenters.

On February 14, Carpenters President Martino and other officials met with some of the Association members and informed them that Local 36 was affiliated with the Carpenters and was not going to affiliate with

[1] Respondent International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island has excepted to the language in the judge's recommended Order and notice to the extent that it could be construed as preventing the Union from enforcing lawful contractual union-security obligations requiring membership in the Union within 8 days of employment. We agree with the judge that the helper addendum to the Bricklayers agreement was lawful and that the collective-bargaining agreement of which it is a part contains a valid union-security provision. We will clarify the Order and notice accordingly.

the Bricklayers. John Verardo from Acme Tile expressed concern that, because the helpers in Massachusetts and Connecticut had decided to affiliate with the Bricklayers, the Bricklayers would prevent him from using Local 36 helpers in those States if they were affiliated with the Carpenters.

On March 29, 1989, 2 days before the Association contract with Local 36 was set to expire, the Association members met at Barricelli's office. Barricelli raised problems relating to Local 36's affiliation with the Carpenters and proposed that they consider an ''Addendum'' to the Local 1 contract. The addendum covered work performed by the helpers at a wage rate comparable to that being paid helpers under Bricklayers' contracts in Massachusetts and Connecticut. Barricelli said that if the Association members did not sign this ''Addendum,'' he would attempt to persuade the Bricklayers locals in Massachusetts and Connecticut to discontinue their previous practice of allowing their setters to work with helpers from Local 36 and to enforce their contracts, which covered helpers. After some discussion among themselves, the Respondent Employers agreed to sign the addendum. The addendum became effective April 1, 1989, and was a supplement to an underlying agreement that contained a union-security clause requiring employees to become members of Bricklayers Local 1 within 8 days of their employment. By letter mistakenly dated May 29, but sent March 29, 1989, Association President MacPhail advised Carpenters President Martino that the Association was repudiating its bargaining relationship with Local 36 effective at the expiration of their agreement on March 31, 1989.

On Friday, March 31, the day before the addendum was to go into effect, several of Respondent Employers' employees were told by their Employers that if they wanted to work on the following Monday morning, they would have to join the Bricklayers. None of the helpers joined the Bricklayers at that time or worked on Monday, April 3.

II. DISCUSSION

The complaint alleges, inter alia, that Respondent Employers Acme Tile and Terrazzo Co. (Acme), Roman Tile & Terrazzo Co. (Roman), Jolicoeur & Resmini Co., Inc. (Jolicoeur), and Admiral Tile Co., Inc. (Admiral) violated Section 8(a)(1), (2), and (3) of the Act by forcing their helper employees to join International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island (Bricklayers).[2]

The judge dismissed this aspect of the complaint. He found, inter alia, that the Respondent Employers' statements (on which these complaint allegations were predicated) that employees must join the Bricklayers Union in order to continue working were an explanation of contractual union-security provisions.

The General Counsel and the Charging Party, Local No. 36-T of the United Brotherhood of Carpenters and Joiners of America, AFL–CIO, filed exceptions. They argue, inter alia, that the statements contributed unlawful support to the Bricklayers within the meaning of Section 8(a)(2) and interfered with the employees' Section 7 right to join or assist the Carpenters and to refrain from joining the Bricklayers, within the meaning of Section 8(a)(1), citing *Freeman G. Gaffney, Inc*., 205 NLRB 1012, 1016–1017 (1973). The General Counsel also argues that even if the addendum and the union-security clause were legal, a requirement that the employees join the Union violates Section 8(a)(1), (2), and (3) when the employees are not given the statutory 7-day grace period and, instead, it is implied that immediate execution of membership cards is a condition of employment. He relies on *Bear Creek Construction Co*., 135 NLRB 1285, 1286 fn. 4 (1962), and *Luke Construction Co*., 211 NLRB 602 (1974). Moreover, according to the General Counsel, those employees who were not allowed to work because they refused to join Local 1, a minority union, are discharged discriminatees under Section 8(a)(3).

We find merit in these 8(a)(1), (2), and (3) allegations. Although we agree with the judge that the Respondent Association lawfully entered into an 8(f) agreement with Bricklayers Local 1,[3] we disagree with his conclusion that the Respondent Employers' statements and the resulting terminations did not violate the Act.

The Association contract provided that employees were required to join that Bricklayers within 8 days of their employment. Indeed, Section 8(f) of the Act requires that there be a 7-day grace period.[4] Nevertheless, the judge credited testimony that these Respondent Employers all told their helpers to join the Bricklayers before they reported to work on Monday, April 3, 1989, only 2 days after the new agreement went into effect.[5] The Respondent Employers have not even as-

[2] Neither Respondent Providence nor Respondent Association was included in these complaint allegations.

[3] There was neither unlawful coercion nor assistance so as to invalidate the addendum.

[4] Sec. 8(f) provides that a prehire agreement may require ''as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment. . . . .'' Sec. 14(b), however, provides that ''[n]othing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.''

[5] For example, according to Acme helper Robert Degnan's credited testimony, Acme President John Verardo told him on March 31 that he had signed a contract with the Bricklayers Union and ''if we wanted to work Monday, we had to come in Monday morning and be prepared to sign a card joining the Bricklayers Union or we can't work . . . . He said he would have cards available at the shop to sign.''

serted that these were inarticulate communications or misunderstandings. Thus, we must conclude that the Respondent Employers said what they meant, and meant what they said. Plainly, the helpers had no 7-day grace period. By telling employees that their continued employment was conditioned on membership in Respondent Bricklayers Local 1 as of Monday, April 3, 1989, which did not allow for 8(f)'s 7-day grace period, Respondent Employers Acme, Admiral, Jolicoeur, and Roman have interfered with, restrained, and coerced employees in the exercise of their rights to refrain from joining a labor organization in violation of Section 7 of the Act and Section 8(a)(1) of the Act, and have rendered unlawful assistance to Local 1 in violation of Section 8(a)(2) and (1) of the Act.[6]

By the same token, we find that Respondent Employers Admiral, Acme, Roman, and Jolicoeur terminated their helpers on March 31, 1989, because they refused to join Local 1. The Respondent Employers had a collective-bargaining agreement with the Massachusetts Bricklayers covering tilesetters. Based on their understanding that the setters would refuse to work with helpers represented by the Carpenters, the Respondent Employers terminated those helpers on Friday, March 31, to ensure that there would be no work stoppage in Massachusetts or Connecticut on Monday morning and that the Employers would be able to work without incident. Those employees who subsequently joined Bricklayers Local 1 were allowed to return to work.[7] Under the express language of the Association's collective-bargaining agreement with the Bricklayers and consistent with the requirements of the Act, employees were entitled to an 8-day grace period in which to become members of the Bricklayers. The Respondent Employers' insistence on *immediate* membership deprived them of their right to exercise their choice in the matter and unlawfully encouraged their membership in Bricklayers Local 1. By forcing employees to join the Bricklayers before they could lawfully be required to do so, Respondent Employers Roman, Jolicoeur, Acme, and Admiral also unlawfully discouraged membership in Carpenters Local 36. Accordingly, we find that the Respondent Employers violated Section 8(a)(3) and (1) of the Act when they conditioned the continued employment of ''helpers'' on those employees immediately joining Local 1 of the Bricklayers Union.[8]

[6] *Luke Construction Co.*, 211 NLRB 602, 603 (1974).

[7] In mid-May, Jolicoeur employee John Eghian was told by Supervisor Joe Resmini that he could return to work if he joined the Bricklayers. Ten of the helpers resigned from the Carpenters and joined the Bricklayers on the following dates in 1989: Gerard Peltier, April 6; Sam DeRotto, June 16; Karl Langborg, June 26; Carlo Martino, July 3; Paul Baptista, July 5; David Curtis, July 11, Robert Bordieri, July 24; Greg Sears, September 18; Paul Graziano, September 20; and John Eghian, September 28.

[8] *Metric Constructors*, 297 NLRB 913 (1990).

AMENDED CONCLUSIONS OF LAW

Delete Conclusion of Law 4 and add the following:

''4. Respondents Roman, Jolicoeur, Acme, and Admiral violated Section 8(a)(1) of the Act by telling their respective employees on March 31, 1989, that their continued employment was conditioned on membership in International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island as of April 3, 1989.

''5. Respondents Roman, Jolicoeur, Acme, and Admiral violated Section 8(a)(1) and (2) of the Act by requiring on March 31, 1989, that their employees immediately join the Bricklayers.

''6. Respondents Roman, Jolicoeur, Acme, and Admiral violated Section 8(a)(1) and (3) of the Act by terminating their employees because they refused to join the Bricklayers.

''7. Respondent Ceramic Tile, Marble & Terrazzo Contractors Association of Rhode Island, Inc. and Respondent Providence Marble Corp. have not violated the Act.

''8. The unfair labor practices are unfair practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.''

AMENDED REMEDY

Having found that Respondents Roman, Jolicoeur, Acme, and Admiral have engaged and are engaging in unfair labor practices, we shall order that they cease and desist and take affirmative action necessary to effectuate the purposes of the Act and to post an appropriate notice.

Having found that Respondent Employers Roman, Jolicoeur, Acme, and Admiral violated Section 8(a)(3) and (1) of the Act by discharging employees, we shall order each to offer its discriminatorily discharged employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed and to expunge from their files all references to the terminations. We shall also order that each of these Respondents make the discriminatorily discharged employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with in-

In light of the above findings of violations against the Respondent Employers, limited solely to the denial of the statutorily required 7-day grace period, we need not pass on whether their conduct was unlawful for the additional reason that the contract assertedly applied only to projects begun after April 1. Since we do not pass on this issue, we do not decide whether employees working on projects begun before April 1 could be lawfully subjected to the union-security clause of the contract.

terest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that

A. Respondents Acme Tile and Terrazzo Co., Providence, Rhode Island. Admiral Tile Co., Inc., Johnston, Rhode Island; Jolicoeur & Resmini Co., Inc., Providence, Rhode Island; and Roman Tile & Terrazzo Co., Riverside, Rhode Island, their officers, agents, successors, and assigns, shall take the action set forth below.

1. Cease and desist from

(a) Telling their employees that their employment is conditioned on joining International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island before the expiration of the 8-day grace period provided by law and contained in the union-security clause of the collective-bargaining agreement.

(b) Requiring their employees to join International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island before the expiration of the 8-day grace period provided by law and contained in the union-security clause of the collective-bargaining agreement.

(c) Discouraging membership in Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, or any other labor organization, by discharging employees or by otherwise discriminating against employees in regard to hire, tenure of employment, or other terms or conditions of employment because the employees do not join International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island before the expiration of the 8-day grace period provided by law and contained in the union-security clause of the applicable collective-bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Gerard Peltier, Karl Langborg, Sam DeRotto, Carlo Martino, Paul Baptista, David Curtis, Robert Bordieri, Greg Sears, Paul Graziano, John Eghian, and any and all unlawfully discharged employees on the payroll as of March 29, 1989, reinstatement to their former positions or, if any of those positions no longer exist, to a substantially equivalent position, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings and other benefits they may have suffered by reason of the respective Respondents' unlawful termination of them as set forth in the amended remedy section of this Decision and Order.

(b) Make whole the discriminatorily discharged employees for any loss of earnings they may have suffered because of their unlawful discharges as set forth in the amended remedy section of this Decision and Order.

(c) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at their respective offices copies of the attached notice marked ''Appendix A.''[9] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

B. take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Restraining and coercing employees in the exercise of their Section 7 rights by threatening them with loss of work because they are not members of the Respondent, except to the extent that it seeks to enforce a lawful union-security clause.''

2. Substitute the attached ''Appendix B'' for that of the administrative law judge.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT tell employees that their employment is conditioned on joining International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island before the expiration of the 8-day grace period pro-

vided by law and by the union-security clause of the collective-bargaining agreement.

WE WILL NOT require employees to join International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island immediately upon hire or before the expiration of the 8-day grace period provided by law and by the union-security clause of the collective-bargaining agreement.

WE WILL NOT discourage membership in Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, or any other labor organization, by discharging employees or by otherwise discriminating against employees in regard to hire, tenure of employment, or other terms or conditions of employment because they do not join International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island before the expiration of the 8-day grace period provided by law and by the union-security clause of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coercing you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Gerard Peltier, Karl Langborg, Sam DeRotto, Carlo Martino, Paul Baptista, David Curtis, Robert Bordieri, Greg Sears, Paul Graziano, John Eghian, and any and all unlawfully discharged employees on the payroll as of March 31, 1989, reinstatement to their former positions or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits they may have suffered by reason of the discharges less any net interim earnings, plus interest.

ACME TILE AND TERRAZZO CO.; ADMIRAL TILE CO., INC.; JOLICOEUR & RESMINI CO., INC.; ROMAN TILE & TERRAZZO CO.

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT restrain and coerce employees in the exercise of their Section 7 rights by threatening them with loss of work because they are not members of the International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island, except to the extent we seek to enforce a lawful union-security clause.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTSMEN, LOCAL NO. 1 RHODE ISLAND

Kathleen McCarthy, Esq., for the General Counsel.
Richard A. Skolnik, Esq., of Providence, Rhode Island, for Respondent Union.
Girard Visconti, Esq., of Providence, Rhode Island, for Respondent Employers and Respondent Association.
Julius C. Michaelson, Esq., of Providence, Rhode Island, for the Charging Party.

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. Based on previously filed charges in the above-captioned case filed by Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL–CIO (Local 36-T or Charging Party), the Regional Director for Region 1 issued an order consolidating cases, consolidated complaint and notice of hearing on October 6, 1989, against Respondent Employers, Acme Tile and Terrazzo Co. (Acme), Roman Tile and Terrazzo Co. (Roman), Jolicoeur & Resmini Co., Inc. (Jolicoeur), Providence Marble Corp. (Providence Marble), Admiral Tile Co., Inc. (Admiral), and Ceramic Tile, Marble and Terrazzo Contractors Association of Rhode Island, Inc. (Association), charging these employers with violations of Section 8(a)(1), (2), and (3) of the Act.[1] Further alleged is that the International Union of Bricklayers and Allied Craftsman, Local No. 1 Rhode Island (Bricklayers or Local 1) committed unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act. Answers thereto were timely filed by Respondents. Pursuant to a motion, a hearing was held before the administrative law judge on February 6, 7, 8, 9, and 10,

[1] The Regional Director for Region 1, by letter dated September 26, 1989, refused to issue complaint on the 8(a)(5) allegation concluding:

> I have determined that further proceedings are not warranted with regard to the allegations that the Association and its Employer Members named above violated Section 8(a)(5) of the Act by negotiating and executing a collective-bargaining agreement with Bricklayers and Allied Craftsmen, Local 1 during the term of their contract with the Carpenters.
>
> The investigation revealed that the Carpenters' contract, which was a contract with the Association and was due to expire on March 31, 1989, was an agreement under Section 8(f) of the Act. Therefore, the Association and its Employer Members were not obligated by the Act to continue to recognize the Carpenters after March 31, 1989. *John Deklewa & Sons, Inc.*, 282 NLRB [1375] (1987). The investigation further revealed that the contract that the Association executed with the Bricklayers on March 29, 1989 was not to be effective until April 1, 1989. As this contract was not effective by its terms until after the Association and its Employer members were free to cease recognizing the Carpenters, they did not violate Section 8(a)(5) of the Act by entering into the contract. I am therefore refusing to issue a complaint alleging that the Association and its Employer Members violated Section 8(a)(5) of the Act.

all in 1990, at Providence, Rhode Island.[2] Briefs have been timely filed by Respondent Association and Employers, Respondent Bricklayers, Charging Party, and General Counsel which have been duly considered.[3]

FINDINGS OF FACT

I. EMPLOYERS' BUSINESSES

Respondent Employers are corporations with offices and places of business in the State of Rhode Island where they are engaged as ceramic tile, marble and terrazzo contractors in the building and construction industry, performing residential, commercial, and industrial work. The complaint alleges, the Respondent Employers admitted at the hearing, and I find that Respondent Employers are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, Respondents admits, and I find that Local 36-T and Local 1 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*[4]

The Association has been in existence for approximately 30 years. As noted above, the Employer members of the Association at present are Acme, Admiral, Jolicoeur, Providence Marble, and Roman. Local 36, Tile, Marble and Terrazzo Finishers, Shopmen and Granite Cutters International Union (Local 36 or TMT) has represented under contract employees of these Employers engaged in the work of grouting, acid washing, mixing, cleanup, and various other duties involved in the installation of tile, except for the setting of the tile itself. Local 36 represents a total of some 18 employees known as helpers or finishers. The actual setting of the tile is done by employees represented under separate contract by Local 1. These employees are known as setters, or mechanics.[5] The geographical jurisdiction of Local 1 is limited to Rhode Island.

At a national convention of the TMT in August 1988, there was a vote to affiliate with the International Brotherhood of Carpenters (herein Carpenters). Pursuant to this vote, an agreement of affiliation was drafted and signed by the presidents of both International Unions. This document was dated November 10, 1988.

By letter dated December 2, 1988, from Carpenters General President Sigurd Lucassen, TMT Local Unions were advised that an agreement of affiliation had been approved by the general executive board of the TMT and ratified by the general executive board of the Carpenters.[6] Despite the affiliation, it appears that prior to and even after the affiliation, many TMT Local Unions in various States rejected affiliation with the Carpenters and, instead, decided to affiliate with the Bricklayers. Among those who voted to affiliate with the Bricklayers were TMT locals in Connecticut and Massachusetts. The Employers all signed contracts with Bricklayers locals in those States covering their helpers.

After being notified of the affiliation, sometime in early January 1989,[7] John Martino, president of Local 36, received a telephone call from David Barricelli, business manager for Local 1, inviting the executive board of 36 to meet for the purpose of discussing the possibility of having Local 36 join Bricklayers Local 1 in the manner that so many other TMT locals nationally had affiliated with Bricklayers rather than accept affiliation with the Carpenters.

The invitation was accepted despite the fact, as Martino testified, he regarded Local 36 as being already affiliated with the Carpenters.

In this regard, it is significant to note that despite the affiliation, Local 36 was still authorized under the agreement of affiliation to retain its identity and to exercise autonomy at the local level. Paragraph 4 of the agreement of affiliation reads, in pertinent part:

> Former TMT Local Unions who have sufficient financial resources and membership to maintain a full-time representative shall, for a period of at least 2 years from the date of affiliation, continue to maintain their own charter as UBC Local Unions, affiliated with the appropriate UBC Council, and shall conduct their own affairs and have their own Bylaws and working rules, subject to the UBC Constitution and Laws and the applicable Council Bylaws and bargaining structure.

The meeting was held on January 10 at the Aurora Club in Providence, Rhode Island. In attendance at this meeting were Martino and the rest of the Local 36 Executive Board. Representing Local 1 were Barricelli and the executive vice president of the Bricklayers, Thomas Uzzalino. At this meeting, Martino explained that Local 36, if it joined Local 1, wanted to maintain its independence by retaining its own business agent, its own executive board and its own set of books in the same way that Martino understood that TMT locals in Massachusetts and Connecticut had joined Bricklayers locals in those States. These terms were unacceptable to Barricelli who took the position that Local 36 would have to integrate with Local 1. Martino did agree to allow Barricelli to address Local 36 on the matter.

At a union meeting on February 3, Barricelli addressed the membership of Local 36. Only two members were absent. Barricelli explained to the membership that TMT locals in Massachusetts and Connecticut had already joined the Bricklayers and that if they joined Local 1, they would be pro-

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[2] At the hearing, par. 6(a) of the complaint was amended to add ''Alfred Conti, Vice-President of Admiral,'' and par. 7(d) of the complaint was amended to substitute ''Vice-President Alfred Conti'' for ''President Joseph Lombardi.''

[3] Errors in transcript have been noted and corrected.

[4] By Order dated October 4, 1990, I denied Respondent Employer Association's motion to file a responsive pleading and granted General Counsel's motion to reopen hearing to receive two court decisions related to the validity of the International level merger between the Carpenters and TMT. These decisions appear in the record as J. Exhs. 1 and 2. Having reviewed all information, I have concluded that those decisions, addressed to the validity of the merger, does not affect the disposition of the instant case.

[5] The Bricklayers also represent crafts other than setters within what is generally called the ''trowel'' trades.

[6] While the date of the affiliation agreement was November 10, 1988, Local 36 did not receive its charter or its designation as Local 36-T of the Carpenters until May 1989.

[7] All dates refer to 1989 unless otherwise indicated.

vided a seat on the Administrative Department, one person in negotiations, and that there would be no initiation fee if Local 36 joined as a group. He also explained those fringe benefits available through Local 1. According to Martino, Barricelli also advised them that if they did not join Local 1, he would speak to the Bricklayers locals in Massachusetts and Connecticut and advise them that the Local 36 helpers were Carpenters and should no longer be permitted to work in those jurisdictions. This was a substantial consideration since much of the work done by the Respondent Employer members of the Association was done in Massachusetts and Connecticut. He also told them that setter members of Local 1 would not be permitted to work with Carpenters from Local 36 and that if they did so, they would be fined. Finally, at the end of the meeting, Barricelli told the membership that there were two ways to deal with people, either you offer them a carrot which well and good if accepted, but if not, you use a hammer. He urged them to think it over, to discuss it and get back to him soon with a decision. After Barricelli left, the membership meeting continued where the matter was discussed. Apparently, some members were offended by Barricelli's remarks, and concerned that Barricelli would do as he had said which would prevent them from working. Martino agreed to seek advice from the Carpenters International which he did, and a special meeting was arranged for February 6 at the Local 36 Union Hall.

At this meeting, the Carpenters were represented by Carl Soderquist, a Regional representative who told them that the membership of Local 36 was already Carpenters under the terms of the agreement of affiliation and that Barricelli had no right to threaten their work jurisdiction. Further, that the Carpenters would provide advice and legal assistance to Local 36 if that became necessary. After Soderquist left, the membership discussed the matter among themselves and a standing vote was taken among the membership on the question whether to stay with the Carpenters or join the Bricklayers, which disclosed that all present wanted to stay with the Carpenters. Martino had authorization cards which he distributed to the members explaining that if they wanted to designate the Carpenters to represent them, they should complete and sign the cards. The cards, however, did not mention affiliation with the Carpenters and, in fact, authorized ''Local #36 TMT Finishers & Shopmen Int'l'' as the collective-bargaining agent. All 16 members present signed the authorization cards.

A few days after the meeting, Barricelli called Martino and asked what the membership had decided. Martino told him that the decision was not to join the Bricklayers. Barricelli responded that he would do what he had to do to help them change their minds.

On February 14, Martino, along with William Holmes, business agent from Carpenters Council 94, Frank Fiano, a representative of the Carpenters, and Soderquist met with some Employer members of the Association, including John Verardo from Acme and Robert Morin from Jolicoeur. Martino explained that Local 36 was going to stay with the Carpenters. Verardo expressed concern that since the helpers in Massachusetts and Connecticut had gone with the Bricklayers, the Bricklayers would prevent him from working with Local 36 helpers in Massachusetts and Connecticut since they were Carpenters. Soderquist explained that the Carpenters would do what had to be done. Verardo inquired about a new contract to replace the current contract with Local 36, TMT expiring on March 31. Soderquist confirmed that the present Local 36 Executive Board would be able, under the terms of the agreement of affiliation, to negotiate their own contract without interference and that the only difference would be that Local 36 would be known as Carpenters. Verardo would not agree to negotiate with Local 36. Rather, he told them that he would await advice from the Association and the Bricklayers.

As for Barricelli, having been advised by Martino that Local 36 intended to retain their affiliation with the Carpenters, Barricelli took the steps that he had indicated to Martino that he would. By letter dated February 20, he advised Local 18 of the Bricklayers in Massachusetts as follows:

> I am writing to update you as to the situation that exists between the International Union of Bricklayers and Allied Craftsmen and the Tile, Terrazzo, Marble Finishers of Providence, Rhode Island.
>
> Please be advised that currently all discussions with them pertaining to their joining this organization have broken down, and it appears that they will be trying to operate as members of the Carpenters International Union. Therefore, at this time, I would request that you not extend the courtesies that you have been by allowing them to work within your jurisdiction in Massachusetts and ask that you replace them with helpers who belong to the International Union of Bricklayers and Allied Craftsmen.
>
> If you should have any further questions regarding this matter, please feel free to contact this office or Executive Vice President Thomas Uzzalino in Washington.

On February 22, substantially the same letter was sent by Barricelli to Local 65 of the Bricklayers in Connecticut. All five members of the Association were sent copies of this letter.

Barricelli also sent a letter dated February 23 to setter members of Local 1 in Rhode Island. This letter read:

> The purpose of this memo is to update you on the current situation that exists pertaining to tile, terrazzo, and marble finishers.
>
> Earlier this year merger discussions between the Finishers International Union and the Bricklayers International Union broke down, and eventually their General President, in an action at their National Convention this summer, ordered the remaining locals into the Carpenters International Union. This action is currently being contested in the courts by several finishers locals.
>
> In the interim, however, approximately 5,000 of the 8,000 members of the Finishers International joined the International Union of Bricklayers and Allied Craftsmen. Locally, the helpers in Massachusetts and the helpers in Connecticut were among the helpers that joined our International.
>
> Several months ago I discussed the possibility of having helpers from Rhode Island join this organization with their Local Executive Board. Executive Vice President Thomas Uzzalino came to Providence from Washington to attend that meeting. When we left that meet-

> ing, we were lead [sic] to believe that the helpers would in fact be joining this organization, and they were supposed to contact me to address their full membership. Unfortunately, since that time, they have taken the position that they will not join this organization and will be operating as members of the Carpenters International Union.
>
> The ramification of this action is as follows. I have notified Mike Titino in Boston and Joe Colomonico in Connecticut and told them to no longer extend the courtesy of allowing Rhode Island helpers to work in Massachusetts and Connecticut, and they have both assured me that they will now not allow helpers who do not belong to the International Union of Bricklayers and Allied Craftsmen to work in either of those jurisdictions. I must also advise you that if you are caught working with a helper who does not belong to the International Union of Bricklayers and Allied Craftsmen you will be fined accordingly. With regards to work in Rhode Island, please be advised that we will be notifying the contractors that we are claiming the work of the finisher, and once this has been done, you will be notified that you no longer will be able to work with finishers who are not members of this organization in Rhode Island.
>
> I WANT TO MAKE EXPLICITLY CLEAR TO YOU THAT YOU HAVE EVERY RIGHT TO DO ALL OF THE WORK NECESSARY TO COMPLETE YOUR INSTALLATION, INCLUDING ALL WORK CURRENTLY DONE BY THE FINISHERS.
>
> I will be contacting you within the next couple of weeks as to the date, time, and place of a formal meeting instructing you as to your rights and work assignments within the industry. I would hope that all of you will be in attendance at that meeting. If you have any questions pertaining to this memo, please feel free to contact this office.

In early March, a meeting took place at the offices of Roman between the Local 36 Executive Board, Steve MacPhail of Roman and Robert Morin of Jolicoeur. Also in attendance was Holmes. The meeting was essentially to discuss a new contract for the helpers when the current contract expired on March 31, and the question raised by the Employers concerned what would happen now that Local 36 was affiliated with the Carpenters. What would happen when they worked in Massachusetts and Connecticut? The Employers were afraid that Barricelli would prevent them from using Local 36 helpers in those States and thus preclude them from working there. This was especially important to MacPhail since one-third of his work was in Massachusetts. MacPhail told Martino that he was not going to negotiate any agreement until he had spoken to the other Association and obtained advice from the Tile Council in Washington.

On March 29, at Barricelli's request, the Association Employer members met at Barricelli's office, ostensibly to discuss the terms of the wage reopener in Local 1's contract with the Association for the setters. Once the meeting began however, Barricelli turned their attention to problems relating to Local 36's affiliation with the Carpenters. Barricelli proposed for their consideration what was described as an ''Addendum'' to the Local 1 contract with the Employers providing coverage therein for the helpers, together with a wage rate following the wage rate being paid to helpers under Bricklayers' contracts in Massachusetts and Connecticut. The Employer asked what would happen if they refused to sign, and Barricelli told them that he would do as he had indicated earlier, attempt to persuade the Bricklayers locals in Massachusetts and Connecticut not to allow setters in those jurisdictions to work with helpers from Local 36, but to adhere to the Bricklayers contracts covering helpers in those States, which, according to Barricelli, contained union-security provisions. These contracts were not put into evidence.[8] As to the finishing work in Rhode Island, Barricelli intended to file a claim under the auspices of the Building Trades Council of the AFL–CIO, claiming the work as a work jurisdiction dispute.

After a caucus, and some discussion, the Employers agreed to the addendum and signed it. By its terms, it became effective April 1 and expired, along with the Local 1 contract, on April 30, 1990. With respect to motivation, MacPhail testified, in essence, that despite the fact that he was aware that his employees were affiliated with the Carpenters, he signed with the Bricklayers because one-third of his work was in Massachusetts and if he did not sign the contract, he would not be able to use his own helpers in Massachusetts, which meant that he would not be able to work in Massachusetts. MacPhail also testified that he was influenced by the fact that so many (MacPhail had heard a figure of 80 percent) TMT locals nationally, including those in Massachusetts and Connecticut had joined the Bricklayers and by the fact that the helpers, unlike the Carpenters, were a ''trowel'' trade performing work closely related to and working with the Bricklayers setters as a part of the same crew. Essentially, the same views were shared by Verardo, Morin, and Joseph Lombardi of Admiral Tile. Not surprisingly, all the contractors were concerned with being able to continue to do business in Massachusetts and Connecticut as well as Rhode Island.

By letter dated May 29, Martino was advised by Association President MacPhail that the Association was repudiating its bargaining relationship with Local 36. The letter read:

> The Collective Bargaining Agreement between Tile, Marble, Terrazzo Finishers, Shopworks [sic] & Granite Cutters International Union (AFL–CIO) Local #36 expires March 31, 1989.
>
> In light of the expiration of the Agreement, please be advised that this letter is to serve as official notice to you and your local union that the Ceramic Tile, Marble and Terrazzo Contractors Association of Rhode Island, Inc. is repudiating its bargaining relationship with Tile, Marble, Terrazzo, Finishers, Shopworkers & Granite Cutters International Union (AFL–CIO) local #36 effective at the expiration of the above mentioned Agreement.
>
> Be further advised that as this Association has not voluntarily accepted, nor has Local #36 legally demonstrated the fact that Local #36 represents majority support among our employees. Therefore, we will not

[8] Under an informal and longstanding arrangement, first with the TMT locals and later with Bricklayers locals, Local 36 helpers had been allowed to work for the Employers in Massachusetts and Connecticut despite the fact those locals had contracts in those States covering helpers.

> engage in any future bargaining with Tile, Marble, Terrazzo Finishers, Shopworkers & Granite Cutters International Union (AFL–CIO) Local #36.

The record discloses that on Friday, March 31, the final day before the addendum with Local 1 covering the helpers was to go into effect, various employees were approached by management concerning their continued employment.

Sam Derotto, vice president of Local 36 and an employee of Admiral, testified that he was approached on March 31 by one of the Admiral owners, ''Chippi'' Conti, and told that he would not be able to work on Monday if he did not join the Bricklayers. Karl Langborg, a helper employed by Acme, testified that Verardo told him in about mid-March that when the Local 36 contract ran out at the end of the month, his helpers would not be able to work after that unless they joined the Bricklayers. Robert Degnan, also an Acme helper, testified, on cross-examination, that Verardo told him, on March 31, in the presence of Langborg and another employee named Paul Graziano that he had signed a contract with Local 1 and that because of the contract, he would have to join the Bricklayers.

Daniel Curtis, an employee of Roman, testified that he was told by MacPhail on Friday, March 31, that in order to work on the following Monday, he would have to join the Bricklayers since they had just signed a contract with Local 1 providing that they had to be Bricklayers in order to work.

Robert Bordieri, a Jolicoeur employee, testified that he was told by Joe Resmini on March 31 that if he wanted to work on the following Monday that he would have to join the Bricklayers and did not mention either the expiration of the contract with Local 36 or the execution of a new contract with Local 1. John Eghian, another Jolicoeur employee, testified that as early as February, he was told by Resmini that he would not be able to work after March 31 because he was a member of the Carpenters. On March 31, on a jobsite, he was told by Morin to ''pick up all your tools and that's it, you can't work any more.'' In mid-May, he was told by Resmini that he could return to work if he joined the Bricklayers. Eghian declined, but did join the Bricklayers later on September 28.

It appears that none of the helpers worked on the Monday following Friday, August 31, or for some time after that. But as time went on, and being without work, most of them did join the Bricklayers in the following months and returned to work.[9]

MacPhail, Verardo, Morin, and Lombardi testified that they told their helper employees on March 31 that they had signed a contract with Local 1 covering the helper work and that in order for them to continue to work, it would be necessary for them to see Business Agent Barricelli and be referred for employment by Local 1 under the terms of the contract. They denied having told their helper employees that they would have to join the Bricklayers in order to work. A review of all the relevant testimony in this record convinces me that the helpers were told that a contract had been signed with Local 1 and that in order to return to work, they would have to be referred by Local 1. Despite their denials, and particularly since under the terms of the Local 1 contract, helpers would have to become members of the Bricklayers within 8 days of their employment, it is credible to believe and I conclude that the Employers did tell them that they would have to join the Bricklayers in order to work.

[9] Ten of the finishers resigned from the Carpenters and joined the Bricklayers on the following dates: Gerard Peltier, , April 6; Sam DeRotto, June 16; Karl Langborg, June 26; Carlo Martino, July 3; Paul Baptista, July 5; David Curtis, July 11; Robert Bordieri, July 24; Greg Sears, September 18; Paul Graziano, September 20; and John Eghian, September 28.

B. *Argument*

The General Counsel contends that Barricelli's remarks to the membership of Local 36 on February 3 violate Section 8(b)(1)(A) of the Act. The Act provides in Section 7 that employees have a right to join or to refrain from joining a labor organization, free from coercion on the part of employer or union. When a union interferes with that right to select or reject representation, it violates Section 8(b)(1)(A) of the Act.

The record makes clear that Barricelli, in addressing the membership of Local 36 on February 3, in an effort to induce them to join the Bricklayers, told them, in essence, that if they insisted on retaining their affiliation with the Carpenters, he would request Bricklayers Local Unions representing helpers in Massachusetts and Connecticut to withdraw the historic courtesy of allowing helpers from Local 36 in Rhode Island to work for the Employers on jobs within those jurisdictions. Barricelli also threatened that in Rhode Island, he would not allow Local 1 setters to work with Local 36 helpers affiliated with the Carpenters. He concluded his remarks with a statement to the effect that he had offered a carrot but that if they did not go along, he would have to use the hammer.

In essence, Barricelli threatened to interfere with an existing beneficial arrangement so as to prevent members of Local 36 from working unless they rejected their affiliation with the Carpenters and joined the Bricklayers. Such remarks are coercive and constitute a violation of Section 8(b)(1)(A) of the Act.

Next, let us consider the legality of the helper addendum to the Bricklayers contract. Section 8(f) of the Act reads:

> (f) . . . It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training

> or experience qualifications for employment or provides for priority in opportunities for employment based upon the length of service with such employer, in the industry or in the particular geographical area: *Provided*, That nothing in this subsection shall set aside the final proviso to section 8(a)(3) of this Act: *Provided further*, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 9(c) or 9(e).

Under these provisions, an employer in the construction industry may sign a prehire agreement without the union establishing majority status. Until the *Deklewa* case,[10] under the ''conversion doctrine,'' collective-bargaining relationships and agreements formed under Section 8(f) of the Act could ''convert'' into a 9(a) relationship by means of evidence that the Union had acquired majority status by means other than a Board election or voluntary recognition. Having thus acquired 9(a) status, the Union would enjoy, like any other 9(a) representative, an irrebuttable presumption of majority status during the term of the contract and a rebuttable presumption at its expiration, giving rise to an obligation to recognize and bargain with the Union as the collective-bargaining representative of the employees. Refusals to bargain were enforceable under the provisions of Section 8(a)(5) and (3) of the Act. Further, the existence of a converted contract served as a bar to any election petition filed after the conversion and during the contract's term.

In *Deklewa*, the Board held in reversing this precedent:

> We have decided to overrule the Board's decision in *R. J. Smith*, to abandon the so-called conversion doctrine, and to modify relevant unit scope rules in 8(f) cases. We shall apply the following principles in 8(f) cases: (1) a collective-bargaining agreement permitted by Section 8(f) shall be enforceable through the mechanisms of Section 8(a)(5) and Section 8(b)(3); (2) such agreements will not bar the processing of valid petitions filed pursuant to Section 9(c) and Section 9(e); (3) in processing such petitions, the appropriate unit normally will be the single employer's employees covered by the agreement; and (4) upon the expiration of such agreements, the signatory union will enjoy no presumption of majority status, and either party may repudiate the 8(f) bargaining relationship.
>
> In taking this action we recognize that the Supreme Court has stated, concerning major portions of current 8(f) law, that ''the Board's construction of the Act, although perhaps not the only tenable one, is an acceptable reading of the statutory language and a reasonable implementation of the relevant statutory sections.'' *NLRB v. Iron Workers Local 103 (Higdon Contracting Co.)*, 434 U.S. 335 (1978) (*Higdon*). It is our view, however, that the development of the current law under *R. J. Smith* and *Higdon* has exposed significant deficiencies. The principles we advance today represent a more appropriate interpretation and application of Section 8(f), and they will better serve the statutory policies of protecting labor relations stability and employee free choice in the construction industry.[11]

In the instant case, the principal issue is whether or not the Association/Bricklayers contract was lawful under Section 8(f) of the Act. It appears that Association/Local 36 contract which expired on March 31, 1989, was an 8(f) contract. Under *Deklewa*, upon the expiration of the contract, either party was free to repudiate the contract. This is what the Association did by letter dated March 29, 1989, and immediately executed the addendum recognizing Local 1 as the collective-bargaining representative of the helper employees and setting a wage rate.

Under the terms of Section 8(f) of the Act, such a prehire agreement would ostensibly be lawful. However, the General Counsel takes the position that entering into the addendum was not lawful because it was the product of unlawful coercion. The facts, set out more fully above, show that Barricelli did write to Bricklayers locals in Massachusetts and Connecticut, advising that Local 36 members were operating as Carpenters and requesting those two locals to stop extending to Local 36 members the courtesy that had previously been extended of allowing them to work despite the fact that contractually Bricklayers locals in Massachusetts and Connecticut represented the helpers, and were entitled to do the helper work in those jurisdictions. Barricelli requested that Local 36 members be replaced by helpers who belonged to those Bricklayers locals. As to the Carpenters members of Local 36 working in Rhode Island, it was Barricelli's expressed intention to submit to the National Joint Board for the Settlement of Jurisdictional Disputes a claim for the helper work, and by letter to the setter members of Local 1 dated February 22, Barricelli advised that any setter working with a helper not a member of Local 1, presumably Local 36 Carpenters, would be fined.

In my opinion, the facts do not establish that Barricelli unlawfully coerced the Association Employers into executing the addendum. I am satisfied, based on the record, that while the members of the Association realized the difficulty that Barricelli's intentions could create for them, if pursued, it was nonetheless their own preference that their helpers be represented by the Bricklayers rather than the Carpenters. In other words, apart from Barricelli's threats, the Association members would have entered into the addendum with Local 1 anyway. First, from the beginning, as a practical matter, the only options available to Association members were either a contract with the Carpenters or the Bricklayers. From the beginning, the Association had balked at recognition by the Carpenters as the collective-bargaining representative for the finishers. Employer meetings with Carpenters representatives reflect reluctance to accept representation by the Carpenters. They were unable to get sought-after assurances that they would be able to work in Massachusetts and Connecticut if their finishers were represented by the Carpenters since the setters and helpers in those States were represented by Bricklayers. They were afraid that the courtesy now being extended in Massachusetts and Connecticut to bring their

[10] *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988).

[11] In *Deklewa*, supra at fn. 41, and in *Sage Development Co.*, 301 NLRB 1173 (1991), the Board held that it will require the party asserting the existence of a 9(a) relationship to prove it. This has not been asserted or proved in this case.

own helpers to work in those States would be discontinued, even without Barricelli's threats.

As MacPhail testified, he signed the contract so that he could continue to use his own men in Massachusetts. Using Rhode Island Local 36-T Carpenters helpers with Bricklayers setters from locals in Massachusetts and Connecticut in those States was clearly a concern, even apart from Barricelli's threats. MacPhail also testified that he was influenced to sign the addendum because the helpers in Massachusetts and Connecticut had joined the Bricklayers, an affiliation which he felt was more appropriate since both were trowel trades working together as a crew on the same projects doing work that was unrelated to carpentry. Another factor influencing MacPhail to sign the addendum was his information that 75 percent of the helpers nationwide, had joined the Bricklayers. The other Association Employers, Verardo, Morin, and Lombardi also testified that they were motivated to sign the addendum for much the same considerations. Having reviewed the relevant testimony, I am satisfied that given the options available to them, the Employers would have signed the addendum even without the threats made to them by Barricelli. In other words, while threats were made by Barricelli, the addendum was not the product of that coercion, but was rather the product of the independent judgments made by the Employers.

Next, the General Counsel contends that in addition to having been the product of unlawful coercion, the addendum was also the product of unlawful assistance. As noted above, Section 8(f) provides, inter alia, that it is not unlawful in the construction industry for an employer to make a prehire agreement with a *labor organization* ''not established, maintained or assisted by any action defined in Section 8(a) of this Act as an unfair labor practice.'' While the Employers made no secret of their preference for representation by the Bricklayers, the record is totally insufficient to support the conclusion that the Employers or the Association ''established, maintained or assisted'' the Bricklayers in violation of Section 8(a) of the Act, and no 8(a)(1), (2), and (3) or 8(b)(1)(A) and 8(b)(2) violations can be predicated on the entering into, maintaining or enforcing the addendum.

Next, the General Counsel argues that even assuming the validity of the addendum, by its terms, it does not apply to any project employing a Local 36 member on March 31 since it covered projects which *began after* the effective date of the addendum, which was April 1. Thus, since only *Carpenters* helpers were employed on uncompleted projects as of April 1, Local 1 had no jurisdiction over those helpers, and directions by the Employers on March 31 for their helpers to get clearance from the Bricklayers violate Section 8(a)(2) of the Act. Further, requiring the seeking of clearance from Bricklayers as a condition of employment constitutes unlawful discrimination under Section 8(a)(3) of the Act.

I disagree. The addendum does not, in my opinion, contemplate representation of the finishers by Local 1 only at such times as new projects are begun, some time after April 1. In relevant, part, the addendum reads:

> This Addendum to the Agreement between the International Union of Bricklayers and Allied Craftsmen Local #1 Rhode Island, hereafter called ''Union,'' and the Ceramic Tile, Marble and Terrazzo Contractors Association of Rhode Island, hereafter called ''Employer,'' dated May 1, 1988, to April 30, 1990, is entered into freely by both parties this 29th day of March 1989 effective April 1, 1989.
>
> In addition to the work assignments set forth in the above-stated and attached Agreement, the Employer agrees to assign to employees represented by the Union, all additional work assignments necessary to complete the entire installation of tile, marble, terrazzo and mosaic projects which begin after the effective date of this addendum.
>
> The Union agrees to establish with the Employer a schedule of wage rates and a schedule of benefit payments for each hour of employment by employees working on the additional assignments.

In my opinion, the controlling date as to the effective dates of the addendum, i.e., the date on which representation begins, is April 1, 1989. Coverage of helpers under the addendum begins at that time and covers work performed beginning April 1, 1989. The interpretation sought by the General Counsel would cause me to abstract and define selected language in a manner totally out of context with the natural meaning of the entire document.

Next, the General Counsel argues that Acme, Admiral, Jolicoeur, and Roman violated Section 8(a)(1), (2), and (3) of the Act on March 31 by forcing their helper employees to join the Bricklayers as a condition of employment. Having concluded that the addendum was lawful under Section 8(f) of the Act, it would appear that under the terms of the addendum, which incorporated the Local 1, Rhode Island Tile, Terrazzo and Marble agreement, that representation by Local 1 began on April 1, 1989. As set out above, I have concluded that these Employers did tell their finishers that a contract had been signed with the Bricklayers and that it would be necessary for them to be referred by the Bricklayers and that it would be necessary for them to join the Bricklayers Union. However, I cannot conclude, under these circumstances, given a valid prehire agreement, that these remarks violate the Act. In context, all the Employers did was to advise their helpers of what appropriate procedures would be under the new contract starting on Monday morning. While they also advised the helpers that they would have to join the Union, this was simply an observation of the natural consequences of the existence of the union-security provisions in the contract which requires membership within 8 days of their employment, and not that they would not be allowed to work unless they immediately joined the Union. Accordingly, these allegations must be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondent Bricklayers Local 1, set forth in section III above, occurring in connection with Respondent Employers' operations, described in section I above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. REMEDY

Having found that Respondent Bricklayers Local 1 violated the Act, I shall recommend that it cease and desist

therefrom and from engaging in any like or related conduct and that it post an appropriate notice, signing additional notices for posting by the Employers if the Employers so desire.

CONCLUSIONS OF LAW

1. Employers and the Employer Association are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Union and the Charging Party are labor organizations within the meaning of Section 2(5) of the Act.

3. By threatening employees, Respondent Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. Respondent Association and Respondent Employers have not violated the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Restraining and coercing employees in the exercise of theirSection 7 rights by threatening them with loss of work because they are notmembers of Respondent.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Post at its business office and on any union bulletin board at the Employers' places of business, copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Forward a sufficient number of signed copies of the notice to the Regional Director for Region 1 for posting by the Respondent Employers in places where notices to employees are posted, if the Employer is willing to do so.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''